

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 20, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 901**

**Introduced by Assembly Member Ridley-Thomas**

February 18, 2005

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An act to amend Section 4970 of, *and to add Section 4974.1 to*, the Financial Code, and to amend Section 27388 of the Government Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 901, as amended, Ridley-Thomas. Covered loans.

Existing law imposes various restrictions on certain consumer loans defined as "covered loans," including prohibiting a covered loan from including a prepayment fee or penalty after the first 36 months after the date of the loan and requiring a specified disclosure notice to a consumer before a covered loan is made. Existing law defines the term "covered loan" to mean a consumer loan in which the original principal balance of the loan does not exceed \$250,000 dollars in the case of a mortgage or deed of trust where certain conditions are met. Existing law defines the terms "points and fees" for the purposes of these provisions.

This bill would instead provide that the term "covered loan" means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by ~~Fannie Mae~~ *the Federal National Mortgage Association*. The bill would also ~~revise~~

~~the definition of the terms “points and fees” to include yield spread premiums require a licensed person that is in the business of originating covered loans to file an annual activity report with its licensing agency that meets specified requirements.~~

Existing law requires a county board of supervisors to review annually the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report submitted to the board.

This bill would also provide that the report be submitted to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION. 1. Section 4970 of the Financial Code is amended  
2 to read:

3 4970. For purposes of this division:

4 (a) “Annual percentage rate” means the annual percentage rate  
5 for the loan calculated according to the provisions of the federal  
6 Truth in Lending Act and the regulations adopted thereunder by  
7 the Federal Reserve Board.

8 (b) ~~(1)~~ “Covered loan” means a consumer loan in which the  
9 original principal balance of the loan does not exceed the most  
10 current conforming loan limit for a single-family first mortgage  
11 loan established by ~~Fannie Mae~~ *the Federal National Mortgage*  
12 *Association* in the case of a mortgage or deed of trust, and where  
13 one of the following conditions are met:

14 ~~(A)~~

15 (1) For a mortgage or deed of trust, the annual percentage rate  
16 at consummation of the transaction will exceed by more than  
17 eight percentage points the yield on Treasury securities having  
18 comparable periods of maturity on the 15th day of the month  
19 immediately preceding the month in which the application for the  
20 extension of credit is received by the creditor.

21 ~~(B)~~

22 (2) The total points and fees payable by the consumer at or  
23 before closing for a mortgage or deed of trust will exceed 6  
24 percent of the total loan amount.

1 ~~(2) The dollar amount specified in paragraph (1) shall be~~  
2 ~~adjusted every five years in accordance with the California~~  
3 ~~Consumer Price Index.~~

4 (c) “Points and fees” shall include the following:

5 (1) All items required to be disclosed as finance charges under  
6 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
7 Regulations, including the Official Staff Commentary, as  
8 amended from time to time, except interest.

9 (2) All compensation and fees paid to mortgage brokers in  
10 connection with the loan transaction.

11 (3) All items listed in Section 226.4(c)(7) of Title 12 of the  
12 Code of Federal Regulations, only if the person originating the  
13 covered loan receives direct compensation in connection with the  
14 charge.

15 ~~(4) Yield spread premiums.~~

16 (d) “Consumer loan” means a consumer credit transaction that  
17 is secured by real property located in this state used, or intended  
18 to be used or occupied, as the principal dwelling of the consumer  
19 that is improved by a one-to-four residential unit. “Consumer  
20 loan” does not include a reverse mortgage, an open line of credit  
21 as defined in Part 226 of Title 12 of the Code of Federal  
22 Regulations (Regulation Z), or a consumer credit transaction that  
23 is secured by rental property or second homes. “Consumer loan”  
24 does not include a bridge loan. For purposes of this division, a  
25 bridge loan is any temporary loan, having a maturity of one year  
26 or less, for the purpose of acquisition or construction of a  
27 dwelling intended to become the consumer’s principal dwelling.

28 (e) “Original principal balance” means the total initial amount  
29 the consumer is obligated to repay on the loan.

30 (f) “Licensing agency” shall mean the Department of Real  
31 Estate for licensed real estate brokers, the Department of  
32 Corporations for licensed residential mortgage lenders and  
33 licensed finance lenders and brokers, and the Department of  
34 Financial Institutions for commercial and industrial banks and  
35 savings associations and credit unions organized in this state.

36 (g) “Licensed person” means a real estate broker licensed  
37 under the Real Estate Law (Part 1 (commencing with Section  
38 10000) of Division 4 of the Business and Professions Code), a  
39 finance lender or broker licensed under the California Finance  
40 Lenders Law (Division 9 (commencing with Section 22000)), a

1 residential mortgage lender licensed under the California  
2 Residential Mortgage Lending Act (Division 20 (commencing  
3 with Section 50000)), a commercial or industrial bank organized  
4 under the Banking Law (Division 1 (commencing with Section  
5 99)), a savings association organized under the Savings  
6 Association Law (Division 2 (commencing with Section 5000)),  
7 and a credit union organized under the California Credit Union  
8 Law (Division 5 (commencing with Section 14000)). Nothing in  
9 this division shall be construed to prevent any enforcement by a  
10 governmental entity against any person who originates a loan and  
11 who is exempt or excluded from licensure by all of the licensing  
12 agencies, based on a violation of any provision of this division.  
13 Nothing in this division shall be construed to prevent the  
14 Department of Real Estate from enforcing this division against a  
15 licensed salesperson employed by a licensed real estate broker as  
16 if that salesperson were a licensed person under this division. A  
17 licensed person includes any person engaged in the practice of  
18 consumer lending, as defined in this division, for which a license  
19 is required under any other provision of law, but whose license is  
20 invalid, suspended or revoked, or where no license has been  
21 obtained.

22 (h) “Originate” means to arrange, negotiate, or make a  
23 consumer loan.

24 (i) “Servicer” has the same meaning provided in Section 6  
25 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

26 *SEC. 2. Section 4974.1 is added to the Financial Code, to*  
27 *read:*

28 *4974.1. (a) Any licensed person that is in the business of*  
29 *originating covered loans shall file an annual activity report with*  
30 *its licensing agency, on a form provided by the licensing agency,*  
31 *that states the total number of covered loans originated by the*  
32 *licensed person during the previous calendar year and the*  
33 *aggregate principal amount of those loans. For purposes of this*  
34 *section, a licensed person is in the business of originating*  
35 *covered loans if the licensed person originates eight or more*  
36 *covered loans in any 12-month period.*

37 *(b) Notwithstanding any other provision of law, a licensing*  
38 *agency may charge and collect its actual reasonable costs*  
39 *incurred auditing activities of a licensed person that is subject to*  
40 *this division.*

1     ~~SEC. 2.~~

2     *SEC. 3.* Section 27388 of the Government Code is amended  
3 to read:

4     27388. (a) In addition to any other recording fees specified in  
5 this code, upon the adoption of a resolution by the county board  
6 of supervisors, a fee of up to two dollars (\$2) shall be paid at the  
7 time of recording of every real estate instrument, paper, or notice  
8 required or permitted by law to be recorded within that county,  
9 except those expressly exempted from payment of recording fees.  
10 “Real estate instrument” is defined for the purpose of this section  
11 as a deed of trust, an assignment of deed of trust, a reconveyance,  
12 a request for notice, and a notice of default. “Real estate  
13 instrument” does not include any deed, instrument, or writing  
14 subject to the imposition of a documentary transfer tax as defined  
15 in Section 11911 of the Revenue and Taxation Code, nor any  
16 document required to facilitate the transfer subject to the  
17 documentary transfer tax. The fees, after deduction of any actual  
18 and necessary administrative costs incurred by the county in  
19 carrying out this section, shall be paid quarterly to the county  
20 auditor or director of finance, to be placed in the Real Estate  
21 Fraud Prosecution Trust Fund. The amount deducted for  
22 administrative costs shall not exceed 10 percent of the fees paid  
23 pursuant to this section.

24     (b) Money placed in the Real Estate Fraud Prosecution Trust  
25 Fund shall be expended to fund programs to enhance the capacity  
26 of local police and prosecutors to deter, investigate, and  
27 prosecute real estate fraud crimes. After deduction of the actual  
28 and necessary administrative costs referred to in subdivision (a),  
29 60 percent of the funds shall be distributed to district attorneys  
30 subject to review pursuant to subdivision (d), and 40 percent of  
31 the funds shall be distributed to local law enforcement agencies  
32 within the county in accordance with subdivision (c). In those  
33 counties where the investigation of real estate fraud is done  
34 exclusively by the district attorney, after deduction of the actual  
35 and necessary administrative costs referred to in subdivision (a),  
36 100 percent of the funds shall be distributed to the district  
37 attorney, subject to review pursuant to subdivision (d). The funds  
38 so distributed shall be expended for the exclusive purpose of  
39 deterring, investigating, and prosecuting real estate fraud crimes.

1 (c) The county auditor or director of finance shall distribute  
2 funds in the Real Estate Fraud Prosecution Trust Fund to eligible  
3 law enforcement agencies within the county pursuant to  
4 subdivision (b), as determined by a Real Estate Fraud  
5 Prosecution Trust Fund Committee composed of the district  
6 attorney, the county chief administrative officer, the chief officer  
7 responsible for consumer protection within the county, and the  
8 chief law enforcement officer of one law enforcement agency  
9 receiving funding from the Real Estate Fraud Prosecution Trust  
10 Fund, the latter being selected by a majority of the other three  
11 members of the committee. The chief law enforcement officer  
12 shall be a nonvoting member of the committee and shall serve a  
13 one-year term, which may be renewed. Members may appoint  
14 representatives of their offices to serve on the committee. If a  
15 county lacks a chief officer responsible for consumer protection,  
16 the county board of supervisors may appoint an appropriate  
17 representative to serve on the committee. The committee shall  
18 establish and publish deadlines and written procedures for local  
19 law enforcement agencies within the county to apply for the use  
20 of funds and shall review applications and make determinations  
21 by majority vote as to the award of funds using the following  
22 criteria:

23 (1) Each law enforcement agency that seeks funds shall submit  
24 a written application to the committee setting forth in detail the  
25 agency's proposed use of the funds.

26 (2) In order to qualify for receipt of funds, each law  
27 enforcement agency submitting an application shall provide  
28 written evidence that the agency either:

29 (A) Has a unit, division, or section devoted to the investigation  
30 or prosecution of real estate fraud, or both, and the unit, division,  
31 or section has been in existence for at least one year prior to the  
32 application date.

33 (B) Has on a regular basis, during the three years immediately  
34 preceding the application date, accepted for investigation or  
35 prosecution, or both, and assigned to specific persons employed  
36 by the agency, cases of suspected real estate fraud, and actively  
37 investigated and prosecuted those cases.

38 (3) The committee's determination to award funds to a law  
39 enforcement agency shall be based on, but not be limited to, (A)  
40 the number of real estate fraud cases filed in the prior year; (B)

1 the number of real estate fraud cases investigated in the prior  
2 year; (C) the number of victims involved in the cases filed; and  
3 (D) the total aggregated monetary loss suffered by victims,  
4 including individuals, associations, institutions, or corporations,  
5 as a result of the real estate fraud cases filed, and those under  
6 active investigation by that law enforcement agency.

7 (4) Each law enforcement agency that, pursuant to this section,  
8 has been awarded funds in the previous year, upon reapplication  
9 for funds to the committee in each successive year, in addition to  
10 any information the committee may require in paragraph (3),  
11 shall be required to submit a detailed accounting of funds  
12 received and expended in the prior year. The accounting shall  
13 include (A) the amount of funds received and expended; (B) the  
14 uses to which those funds were put, including payment of salaries  
15 and expenses, purchase of equipment and supplies, and other  
16 expenditures by type; (C) the number of filed complaints,  
17 investigations, arrests, and convictions that resulted from the  
18 expenditure of the funds; and (D) other relevant information the  
19 committee may reasonably require.

20 (d) The county board of supervisors shall annually review the  
21 effectiveness of the district attorney in deterring, investigating,  
22 and prosecuting real estate fraud crimes based upon information  
23 provided by the district attorney in an annual report submitted to  
24 the board and to the Legislature detailing both:

25 (1) Facts, based upon, but not limited to, (A) the number of  
26 real estate fraud cases filed in the prior year; (B) the number of  
27 real estate fraud cases investigated in the prior year; (C) the  
28 number of victims involved in the cases filed; (D) the number of  
29 convictions obtained in the prior year; and (E) the total  
30 aggregated monetary loss suffered by victims, including  
31 individuals, associations, institutions, corporations, and other  
32 relevant public entities, according to the number of cases filed,  
33 investigations, prosecutions, and convictions obtained.

34 (2) An accounting of funds received and expended in the prior  
35 year, which shall include (A) the amount of funds received and  
36 expended; (B) the uses to which those funds were put, including  
37 payment of salaries and expenses, purchase of equipment and  
38 supplies, and other expenditures by type; (C) the number of filed  
39 complaints, investigations, prosecutions, and convictions that

1 resulted from the expenditure of funds; and (D) other relevant  
2 information provided at the discretion of the district attorney.

3 (e) The intent of the Legislature in enacting this section is to  
4 have an impact on real estate fraud involving the largest number  
5 of victims. To the extent possible, an emphasis should be placed  
6 on fraud against individuals whose residences are in danger of, or  
7 are in, foreclosure as defined under subdivision (b) of Section  
8 1695.1 of the Civil Code. Case filing decisions continue to be in  
9 the discretion of the prosecutor.

10 (f) A district attorney's office or a local enforcement agency  
11 that has undertaken investigations and prosecutions that will  
12 continue into a subsequent program year may receive  
13 nonexpended funds from the previous fiscal year subsequent to  
14 the annual submission of information detailing the accounting of  
15 funds received and expended in the prior year.

16 (g) No money collected pursuant to this section shall be  
17 expended to offset a reduction in any other source of funds.  
18 Funds from the Real Estate Fraud Prosecution Trust Fund shall  
19 be used only in connection with criminal investigations or  
20 prosecutions involving recorded real estate documents.